

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 IN THE MATTER OF,

Case No. 03-48939

Detroit, Michigan

5 VENTURE HOLDINGS COMPANY,
6 INC.
7 _____/

April 19, 2005

1:53 p.m.

8 IN THE MATTER OF,

Case No. 04-54977

9 DELUXE PATTERN CORPORATION
10 _____/

11 CONTINUED CONFIRMATION HEARING
12 BEFORE THE HONORABLE THOMAS J. TUCKER
13 TRANSCRIPT ORDERED BY: LARRY NYHAN, ESQ.

14 APPEARANCES:

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24 Proceedings recorded by electronic sound recording, transcript
25 produced by transcription service.

1 (Court in Session)

2 THE CLERK: Please rise. This Court is now in
3 session. The Honorable Thomas J. Tucker presiding.

4 You may be seated. We'll call the matter of Venture
5 Holdings Company, LLC, 03-08939. And the matter of Deluxe
6 Pattern Corporation, 04-54977.

7 MS. LAMB-HALE: Good afternoon.

8 THE COURT: Good afternoon.

9 MS. LAMB-HALE: I know it was supposed to be morning
10 when you saw me again, but --

11 THE COURT: All right. Well, we have a new Pope and
12 we have everyone here.

13 MS. LAMB-HALE: Yes, we do. Nicole Lamb-Hale on
14 behalf of the Venture debtors.

15 We have proposed orders, Your Honor, and we have a black
16 line for you minus some handwritten changes that have been made
17 to the order since we arrived this afternoon against the order
18 that was originally filed with the Court. May I approach with
19 the orders?

20 THE COURT: Sure, sure.

21 MS. LAMB-HALE: And we also included in the orders
22 per your request, alternate treatment for the Welsh and Katz
23 issue.

24 THE COURT: All right. So the top thing is a black
25 line.

1 MS. LAMB-HALE: The black line, yes, against the
2 order that was filed with the Court.

3 THE COURT: And there are some updates of this?

4 MS. LAMB-HALE: That are in blue in the order that
5 you -- in the big orders that you have.

6 THE COURT: Oh, I see.

7 MS. LAMB-HALE: Yeah, those were made this afternoon.

8 THE COURT: So we've got what looks like three copies
9 of the -- clean copies of the order with some changes
10 handwritten on each one?

11 MS. LAMB-HALE: Right.

12 THE COURT: Same changes handwritten on each set?

13 MS. LAMB-HALE: Exactly. But they're not reflected
14 on your black line because they were just made.

15 THE COURT: All right.

16 MS. LAMB-HALE: And the Welsh and Katz language is in
17 Paragraph 29 with the option A and B.

18 THE COURT: All right.

19 MS. LAMB-HALE: And Your Honor, we were hopeful that
20 we could take, if the order is approved, the third copy back
21 with us for copying. I'm not sure how many you would need.

22 THE COURT: Well, I don't have a problem with that.

23 MS. LAMB-HALE: Okay.

24 THE COURT: You can talk to my courtroom deputy about
25 it, but I wouldn't -- I don't have a problem with it.

1 MS. LAMB-HALE: And I'm sorry, Your Honor, it's
2 Paragraph 27 for Welsh and Katz, not 29.

3 THE COURT: All right. Well, I need to give you the
4 ruling on the Welsh and Katz objection. And Ms. Lamb-Hale,
5 apart from -- aside from resolving that issue, in -- in your
6 view is this order ready to be signed?

7 MS. LAMB-HALE: Yes, Your Honor.

8 THE COURT: And it has been -- as presented here with
9 the latest changes it has been approved by everyone?

10 MS. LAMB-HALE: Yes, Your Honor. I would add though,
11 Your Honor, that there are some individuals who were here
12 yesterday that didn't sign. We have a signature page that we
13 created but have been copied with all the changes except for
14 the ones that were made this afternoon when we arrived to the
15 Court and we believe that they have signed off.

16 THE COURT: I don't see a signature page for me or
17 anyone.

18 MS. LAMB-HALE: I have one here, Your Honor, that --
19 actually, Your Honor, excuse me. May I approach, Your Honor?

20 THE COURT: Yeah. All right. So what about the
21 missing signatures Ms. Lamb-Hale?

22 MS. LAMB-HALE: Your Honor, one of the missing
23 signatures I am not sure of for Autoliv. Mr. LaPlante is here
24 and I'm sure he'll make a statement for the record on that one.

25 But with respect to the others, Your Honor, they were --
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1 the Deluxe debtors, I am -- I have an e-mail in to Mr. Graham
2 which I think he may have replied to, just one moment. It
3 looks like he will at the conclusion of the hearing, agree to
4 sign off on behalf of the Deluxe debtors.

5 And with respect to CMS, Oracle -- with respect to CSM and
6 Oracle, who are the only parties that are not here today, Your
7 Honor, they have been participating in the revisions and were
8 on the calls this morning. And I do believe they have signed
9 off.

10 THE COURT: Well, they haven't signed off here, so
11 how are we going to get their signatures?

12 MS. LAMB-HALE: Well, I can call them, Your Honor, to
13 confirm, but they were --

14 THE COURT: All right. You can get authority to
15 sign.

16 MS. LAMB-HALE: Okay.

17 THE COURT: On their behalf. That's Oracle, CMS,
18 Autoliv is present in the courtroom you said.

19 MS. LAMB-HALE: Yes.

20 THE COURT: Through counsel. Deluxe debtors, Mr.
21 Shapiro is here. And senior lenders, Mr. Burgess is here. All
22 right.

23 Why don't we -- let's do this. First thing, let's --
24 let's get the appearances for the record and then we'll --

25 we'll go from there. On behalf of debtors first, Venture

1 debtors.

2 MR. GRAHAM: Judge, this is Brian Graham on the phone
3 on behalf of the Deluxe debtors.

4 MS. LAMB-HALE: Nicole Lamb-Hale of Foley and Lardner
5 on behalf of the Venture debtors.

6 THE COURT: All right. Is there anyone else on the
7 telephone?

8 MR. CLEMENTE: Yes, Your Honor. This is Matt
9 Clemente from Sidley, Austin on behalf of JP Morgan with the
10 official committee.

11 MS. THOMPSON: Good afternoon, Your Honor. Kerry
12 Thompson of Akin, Gump, Strauss, Hauer, and Feld on behalf of
13 the official committee.

14 THE COURT: Would you say your name again? I didn't
15 hear you.

16 MS. THOMPSON: Kerry Thompson of Akin, Gump, Strauss,
17 Hauer, and Feld on behalf of the official committee.

18 THE COURT: All right. Thank you. Anyone else on
19 the telephone?

20 MR. MAYER: Yes, Your Honor. Tom Mayer and Amy Caton
21 at Kramer, Levin, Natalis, and Frankel for Harvard Distressed
22 Investment Master Fund, one of the pre-petition senior lenders
23 and one of the purchasers.

24 THE COURT: All right.

25 MR. NASH: Good afternoon, Your Honor. Pat Nash from
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1 Skadden, Arps, Slate, Meagher, and Flom, LLP on behalf of Black
2 Diamond.

3 MR. WALPER: Good afternoon, Your Honor. Thomas
4 Walper of Munger, Tolles, and Olson representing pre-petition a
5 secured lender Yucaipa as well as one of the purchasers.

6 THE COURT: All right. Anyone else on the telephone?
7 All right. Other attorneys in the courtroom, please.

8 MR. SHAPIRO: Your Honor, Mark Shapiro on behalf of
9 Welsh and Katz. Your Honor, when the time is right, I want to
10 make a point for clarification purposes about the order that's
11 been presented to the Court.

12 THE COURT: Okay. We'll get to that.

13 MR. BURGESS: Good afternoon, Your Honor. William
14 Burgess of Dickinson, Wright appearing on behalf of JP Morgan
15 Chase Bank the pre-petition lenders' agent.

16 MR. APPLEBAUM: Joel Applebaum on behalf of the
17 committee.

18 MR. ORR: Norman Orr, Kemp, Klein, Humphrey,
19 Endelman, and May on behalf of Multimatic Sales and Marketing.

20 MR. NATHAN: For the record, Your Honor, Ken Nathan
21 from the law firm of Nathan, Neuman, and Nathan on behalf
22 Newstart Factors, Inc. And I need to clarify yesterday we
23 referred to it as Newstart Factors Partners, Inc. It's
24 Newstart Factors, Inc. We've taken the partners out of the
25 order. Thank you.

1 THE COURT: All right.

2 MR. PEURACH: Your Honor, Robert Peurach appearing on
3 behalf of Harper Properties.

4 MR. MCKEE: Ralph McKee, Allard and Fish appearing on
5 behalf of Larry Winget.

6 MR. LAPLANTE: And, Your Honor, Stephen LaPlante from
7 Miller, Canfield appearing on behalf of Autoliv ASP.

8 THE COURT: All right.

9 MS. OSBORNE: Good afternoon, Your Honor. Paula
10 Osborne of Butzel, Long on behalf of Delphi Automotive Systems
11 and Johnson Controls.

12 THE COURT: All right. Anyone else? All right. Mr.
13 Shapiro, why don't we let you say what it is you wanted to say
14 at this point.

15 MR. SHAPIRO: Well, Your Honor, just for purposes of
16 clarification, I wanted to make the point that where we left
17 the issues with regard to Welsh and Katz yesterday was that you
18 had asked the parties to draft some proposed language in the
19 alternative for purposes of the order so that one it can be
20 stricken out.

21 The arrangement that I had with debtors' counsel was that
22 I was going to draft language consistent with the way I wanted
23 the Court to rule. They would do language consistent with
24 their manner. I forwarded that language to Ms. Eisele last

25 night. I didn't get anything back and the two forms, the
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1 alternate forms that appear in the proposed order, the one
2 that's supposedly favorable -- favorable to my position is not
3 consistent with what I had drafted.

4 And I haven't agreed to it and I have some issues with the
5 way that it's drafted. So I just wanted to make that clear. I
6 haven't signed off on the order and quite frankly I didn't see
7 it until I got down here today.

8 A VOICE: Oh, gosh.

9 THE COURT: Well, whoever said that please restrain
10 yourself on the telephone. All right. Mr. Shapiro, do you
11 have the language you can hand me that you are proposing?

12 MR. SHAPIRO: I do, Your Honor. If I may approach.

13 THE COURT: Yeah. All right. Mr. Shapiro, what I --
14 what I think I want to do with this is take a short break and
15 read the alternatives that are in the proposed order, read your
16 language, and then come back out and give my ruling and then we
17 can -- we can, based on the ruling, finalize the language
18 that's going to actually go in the order.

19 MR. SHAPIRO: Thank you, Your Honor.

20 MR. MAYER: Your Honor, this is Tom Mayer. I do
21 think that our drafts had passed and I'm not sure I have seen
22 Mr. Shapiro's language. The language that's in the order now,
23 I transmitted to people at about 11:00 o'clock last night. So
24 if somebody could send me Mr. Shapiro's language, that would be
25 much appreciated. If he can Blackberry it to me, that would

1 be --

2 MR. SHAPIRO: Can't do that.

3 THE COURT: Can or cannot?

4 MR. SHAPIRO: Cannot. I don't have the capability to
5 do it.

6 MS. LAMB-HALE: Mr. Mayer, I think we can take care
7 of it through my office.

8 THE COURT: Ms. Lamb-Hale will take care of it, Mr.
9 Mayer. This -- what he's handed me is a print out of an e-mail
10 that he's sent to Laura Eiseley, it looks like yesterday at
11 8:48 p.m. So Ms. Lamb-Hale, you'll get that to Mr. Mayer while
12 I'm looking at this in chambers?

13 MS. LAMB-HALE: Yes, Your Honor.

14 THE COURT: Okay. Did you hear that, Mr. Mayer?

15 MR. MAYER: Yes. I will look forward to it. My --
16 my mark up was sent around 11:00 p.m. to a laundry list of
17 people which I thought included Mr. Shapiro, but it may not
18 have gotten there. So anyway, I'll look forward to seeing --
19 to seeing his language.

20 THE COURT: You know, apparently no one told Mr.
21 Shapiro that the hearing had been moved from 10:00 o'clock to
22 1:00 either this morning, although we asked debtors to do that.
23 So we need to keep Mr. Shapiro in the loop here obviously. All
24 right. Is there anything we should talk about before I take a
25 short break and review this language?

1 MR. SHAPIRO: Not that I'm aware of, Your Honor.

2 MR. PEURACH: Your Honor, if I may. For the record,
3 Robert Peurach appearing on behalf of Harper Properties.

4 I have approved the order as to form. There was one
5 matter of housekeeping though that happened from the other
6 hearing that I need to address if you don't mind.

7 THE COURT: I'll tell you what, let's hold that. I
8 want to deal with the Welsh and Katz piece of this first, get
9 that resolved.

10 MR. PEURACH: This was simply just saying that Harper
11 would be a party to the reservation of rights contained in
12 Paragraph 47 in the order, that's all, dealing with the
13 adequate assurance.

14 THE COURT: Well, is it in the order or isn't it?

15 MR. PEURACH: I think the parties made their
16 statements on the record that they would be part of that. And
17 I just wanted to include Harper on the record as being part of
18 that.

19 THE COURT: Well, does the order take care of that
20 concern or doesn't it? If it does not, let's do that.

21 MR. NATHAN: It does not, Your Honor.

22 THE COURT: It does not.

23 MS. LAMB-HALE: Unless he --

24 THE COURT: Ms. Lamb-Hale.

25 MS. LAMB-HALE: Your Honor, I think that the concern
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1 was that though we have reservations of rights language in the
2 order, they wanted to be sure that their clients stated for the
3 record that they wanted to be a part of that. I think that's
4 the issue. There was some confusion as to the -- the --

5 THE COURT: So this is a matter of things you want to
6 state for the record rather than have included in the order, is
7 that it?

8 MR. ORR: Your Honor, perhaps -- the order now
9 reflects that the reservation of rights only exists if you made
10 the reservation on the record by counsel at the sale hearing
11 which was not what we thought you had said, but it was easy
12 enough to fix by each of us coming in and reserving our rights
13 which is what I think some of us wish to do.

14 MR. PEURACH: Yeah, that's just what I wanted to do
15 is all.

16 THE COURT: All right. What paragraph is this in the
17 order?

18 MS. LAMB-HALE: Forty-seven.

19 MR. PEURACH: Forty-seven.

20 THE COURT: Forty-seven. All right, just a moment.
21 Page what? Oh, I see, wait, 47?

22 MS. LAMB-HALE: Yes, it is.

23 MR. PEURACH: Paragraph 47.

24 MS. LAMB-HALE: Paragraph 47, Your Honor. Your

25 Honor, if you have difficulty finding it, if I could approach
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1 the numbering has changed.

2 THE COURT: No, no, I see Paragraph 47 at Page 31.

3 MS. LAMB-HALE: And it should refer to the testimony
4 proffered at the sale hearing, that should be --

5 THE COURT: I see it.

6 MS. LAMB-HALE: Okay, great.

7 THE COURT: All right. Look, we're going to take
8 care of this after I come back out and deal with the Welsh and
9 Katz issue.

10 MS. LAMB-HALE: Thank you, Your Honor.

11 THE CLERK: All rise.

12 THE COURT: All right. Be back in a bit.

13 (Court in Recess at 2:08 p.m.; Resume at 2:30 p.m.)

14 THE COURT: All right. I want to begin by ruling on
15 the Welsh and Katz objection which was argued yesterday.

16 I want to begin by noting the nature of the interest
17 claimed by Welsh and Katz in the assets that are the subject of
18 this sale. Welsh and Katz claims to have an attorney's lien
19 which amounts to -- there are two types of liens, common law
20 liens, attorney liens involved here as I understand the
21 argument and the cases cited in -- by Welsh and Katz in their
22 objection to the sale that was filed April 13th. This is at
23 Page 3 of the objection.

24 The -- the first type of lien and a lien which is
25 recognized in favor of attorney under Michigan common law under
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1 certain circumstances is commonly called a -- referred to as a
2 retaining lien as recognized by the cases, at least a couple of
3 cases cited by Welsh and Katz, Michigan cases, including the
4 case of George v Gellman, 201 Mich App 474, 506 NW 2d Reporter
5 at 583, a decision of the Michigan Court of Appeals from 1993.

6 It discusses how there are two kinds of attorney liens.
7 First, what it refers to as a general retaining or possessory
8 lien. And second, a special, particular, or charging lien.

9 With respect to the retaining lien, the Michigan Court of
10 Appeals in that case said that a general or retaining lien is
11 the right to retain possession of all documents, money, or
12 other property of the client until the fee for services is
13 paid. The retaining lien then is a -- is a possessory lien and
14 essentially would apply to property of the debtor which is the
15 attorney's client, that the attorney has in his or her
16 possession.

17 The second type of lien recognized by the Court in the
18 Gellman, George v Gellman case, was described by that Court as
19 -- as I've indicated a moment ago, a special, particular, or
20 charging lien. And the Court described that lien as follows.

21 "The special or charging lien is an equitable right to
22 have the fees and costs due for services secured -- secured out
23 of the judgment or recovery in a particular suit. The
24 attorney's charging lien creates a lien on a judgment,

25 settlement, or other money recovered as a result of the

1 attorney's services.

2 The Court went on to say that these liens, that is the
3 charging liens, automatically attach to funds or a money
4 judgment recovered through the attorney's services". This is
5 from again the Gellman -- George v Gellman case and I'm quoting
6 from 201 Mich App at Page 476 to 477, 506 NW 2d at Pages 584 to
7 585.

8 The -- I want to comment on one other Michigan case that
9 -- that is cited in the objection filed by Welsh and Katz and
10 that is the case of Mahesh v Mills, Mahesh, -a-h-e-s-h, a
11 decision of the Michigan Court of Appeals from 1999, the
12 citation is 237 Mich App 359, 602 NW 2d Reporter at 618.

13 In that case the Michigan Court of Appeals noted that,
14 "first, the attorney's charging lien is an equitable right
15 inherent in the judgment. The Court in that case also held
16 that where there was a conflict between an attorney's charging
17 lien and an opposing party's right to set off against the same
18 judgment, Michigan Courts adhere to the policy that the
19 attorney's charging lien takes precedence".

20 Now in that case that dealt with the right which Michigan
21 law recognizes of a party where parties have competing
22 judgments against each other. One party's right to set off the
23 amount of its judgment against the other judgment as a partial
24 satisfaction of the other's judgment.

25 In that situation both -- it appears under common law and
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1 under a statute cited by the Michigan Court in that case, the
2 attorney's charging lien takes precedence over the opposing
3 party's right to set off of the judgment.

4 Now, I think that holding as well as discussion and
5 holdings in the other case that's cited by -- another case
6 cited by Welsh and Katz, the Keisor Industrial Corporation v
7 D.M. Liquidating Company case, 11 Mich App 438, 161 NW 2d at
8 452. And its discussion of issues dealing with priorities of
9 attorney liens against other claimed interests highlights the
10 fact that it is on the present record given the authorities
11 cited by the parties, our parties, unclear at this point the
12 extent to which if at all one side or the other, that is the
13 Welsh and Katz on the one side and the senior lenders on the
14 other side, which side's liens, claimed liens in the specific
15 property at issue of the debtors has priority over the other.

16 And that is not an issue that the parties -- that the
17 Court is going to decide at this point. And I think we
18 discussed that a bit yesterday.

19 I mentioned those cases and issues dealing with priority
20 only to highlight the fact that it is not necessarily a simple
21 issue when dealing with the priority of an attorney's lien
22 versus other claimed interests such a security interest in all
23 the debtors' assets, but I'm making a decision about priorities
24 at this point.

25 As I understood the argument, Welsh and Katz claims to
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1 have a retaining lien in at least some of the debtors' -- the
2 Venture debtors' property. Although it is unclear from the
3 argument yesterday whether any of that property in which Welsh
4 and Katz claims a retaining lien, it is proposed to be sold or
5 not.

6 Welsh and Katz further claims to have what appears to be a
7 charging lien securing payment of the fees, expenses owing to
8 it in the among other things, the two -- or the patent
9 litigation, the claims that are in patent litigation that are
10 proposed to be sold here as part of this sale. Welsh and Katz,
11 I believe has also indicated through their counsel that they
12 claim to have some sort of attorney lien in certain patents
13 themselves.

14 Now the -- as I understand it there are patents that are
15 proposed to be sold as part of the sale and there are patent
16 claims that are proposed to be sold as part of the sale. There
17 is a breach of contract claim that -- that Welsh and Katz has
18 worked on and is owed fees for or claims to be owed fees for,
19 and claims to have a lien in the claim that is not being sold.
20 And so that is not specifically the subject of today's ruling
21 on the objection to the sale.

22 The debtors and other proponents of the sale, including
23 the purchasers argue that the assets of the debtors in which
24 Welsh and Katz claims an attorney lien may be sold free and
25 clear of any such claim of lien under Section 363(f)(5) of the
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1 Bankruptcy Code which authorizes the sale of property under sub
2 section (b) which is the applicable section here authorizes --
3 that's the one that authorizes the sale other than the ordinary
4 course of business of property of the estate.

5 And authorizes under Section 363(f) such sale free and
6 clear of any interest in such property of an entity other than
7 the estate only if -- and then one of the grounds, the ground
8 at issue here is sub (5) there. That being that such entity,
9 that is in this case Welsh and Katz, could be compelled in a
10 legal or equitable proceeding to accept a money satisfaction of
11 such interest.

12 The parties cite and discuss the case, the Grand Slam case
13 which is In Re: Grand Slam USA, Inc., 178 BR 460, a decision of
14 the United States District Court from this district in 1995 for
15 support of their competing positions on the issue of whether
16 the Welsh and Katz lien, or whether the -- the sale of the
17 property at issue must be subject to the Welsh and Katz liens
18 or may be free of those liens, claimed liens.

19 Grand Slam held first of all, and Grand Slam was a Chapter
20 7 case that had been converted from Chapter 11. One of the
21 things that it held was that -- that a claim, a tax lien claim
22 that is subject to subordination and treatment under Section
23 724(b) of the Bankruptcy Code in a Chapter 7 case, is a claim
24 or lien which may be subject to sale -- subject -- free of that
25 lien under Section 363(f)(5) of the Code because section -- the
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1 provisions of Section 724(b) are a mechanism that qualify for
2 coverage under Section 363(f)(5) as a procedure in which the
3 tax lien claimant can be compelled in a legal or equitable
4 proceeding to accept a money satisfaction of its lien. And to
5 accept less than full payment of its lien as well in such a
6 proceeding.

7 Section 724(b), of course, has no bearing here in this
8 case. There is no tax lien at issue here and that's what that
9 section applies to.

10 But the Court in Grand Slam as the parties discussed, also
11 cited the cram down provision of Section 1129(b)(2)(A) of the
12 Bankruptcy Code as another such legal or equitable proceeding
13 that is of the type covered by Section 363(f)(5). And the
14 Court in Grand Slam indicated that -- that -- "that a 363(f)(5)
15 sale may occur free and clear of a lien without consent of the
16 secured creditor claiming that lien if present or future
17 payments are made to the secured creditor in an amount equal to
18 the present value of the collateral, even if such value is less
19 than the debt".

20 That's the Grand Slam case, 178 BR at 462. The Grand Slam
21 Court then held that -- "that a 363 sale may occur under
22 Section 363(f)(5) with less than full payment of a secured
23 creditor's lien and the property may be sold free and clear of
24 that lien if the secured creditor could be compelled through a
25 cram down under Section 1129(b)(2)(A) to essentially and

1 voluntarily receive the -- and suffer an extinguishment of its
2 lien upon payment of the present value of its allowed secured
3 claim".

4 Which is what Section 1129(a)(2) -- (b)(2)(A) permits in
5 -- in terms of confirming a plan over the objection of and
6 dissent of a secured creditor under the cram down provisions of
7 Section 1129(b).

8 Given that, I conclude that if that standard is met, that
9 is that if the secured creditor here, Welsh and Katz, is
10 receiving as a result of this sale at least the value, the
11 present value of its collateral, even though that may be --
12 even though that is -- is or may be less than actually
13 receiving present value of its allowed secured claim, what
14 would be its allowed secured claim, even if that is less than
15 the value of the total claim which Welsh and Katz claims is
16 secured by, that -- that that sale may be permitted free and
17 clear of the Welsh and Katz liens under Section 363(f)(5).

18 Now, Welsh and Katz argues though that that cannot be done
19 at this point because there has been no valuation. And for one
20 reason there has been no valuation of its collateral -- its
21 claimed collateral. So the amount of its allowed secured claim
22 within the meaning of Section 506(a) has not yet been
23 determined and must be before this property could be sold free
24 of its claimed liens.

25 In my view, however, the proponents of the sale free and
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1 clear are correct in arguing as I understand them to argue,
2 that the sale process that has just occurred in this case,
3 including the advertising, the bids, the auction, that entire
4 process, the marketing, has in fact established the value of
5 the debtors' assets being sold which include but are not
6 limited to the assets in which Welsh and Katz claims an
7 attorney lien.

8 And that value has been by that process demonstrated to be
9 far less than an amount sufficient to pay off the liens of the
10 senior lenders. So the conclusion I draw from that is that the
11 claimed liens of Welsh and Katz must be valued at zero unless
12 the Welsh and Katz liens have priority over the senior lender
13 liens.

14 If and to the extent they do have priority over the senior
15 lenders liens, then they are not valued at zero, but have value
16 that must be protected through a continuation of the lien. So,
17 unless Welsh and Katz's liens have both exist and have priority
18 over the senior lender liens as the situation exists prior to
19 the sale here, Welsh and Katz would not have an allowed secured
20 claim to put it another way under Section 506(a), its allowed
21 secured claim would be zero. And also the mechanism of cram
22 down under 1129(b)(2)(A) would enable an extinguishment of
23 Welsh and Katz's lien for that reason such that Section
24 363(f)(5) would apply.

25 Welsh and Katz could be compelled in a legal or equitable
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1 proceeding to accept a money satisfaction of less than the full
2 amount of its claim that is allegedly secured by this property.
3 And in fact could be compelled to accept zero because they have
4 -- that because they would be junior in priority to liens that
5 have been unpaid if in fact that's the case.

6 As I indicated earlier, the Court is not yet determining
7 the question of whether any of the Welsh and Katz claimed liens
8 have priority over the senior lenders' liens, or the extent to
9 which any Welsh and Katz liens have such priority. So the
10 conclusion I draw is that the property in which Welsh and Katz
11 claims a lien, whether it be a retaining lien, or a charging
12 lien, may be sold free and clear of all liens, claims, and
13 interests except that the sale is subject to all claimed liens
14 of Welsh -- Welsh and Katz -- Welsh and Katz only to the extent
15 those liens in fact exist and -- for part of the sale and have
16 priority over the liens of the senior lenders prior to the
17 sale.

18 This means that we need to in the order, I think is the
19 place to do this, but we need to identify the -- all the
20 particular property that is being sold, that is property in
21 which Welsh and Katz claims a lien, whether it be a retaining
22 lien, or a charging lien. And indicate the -- the one
23 limitation on sale free and clear that I have described of that
24 property and the purchaser here.

25 Then we can talk about a schedule if the parties wish to
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1 do that for further proceedings if Welsh and Katz does want an
2 opportunity to argue that one or more of its claimed liens does
3 -- did in fact exist pre-sale and did in fact have priority
4 over one or more of the liens of the senior lenders.

5 I want to comment briefly on the argument, an argument
6 made by the senior lenders/purchaser yesterday. I understood
7 the argument at least, which was that Section 363(f)(5) also
8 applied to prevent the sale free and clear of any claimed lien
9 by Welsh and Katz because under non-bankruptcy law, essentially
10 state law, the senior lenders could foreclose on their liens in
11 the property at issue through a foreclosure sale and sale. And
12 by so doing could extinguish the junior lien of Welsh and Katz
13 with Welsh and Katz receiving nothing because the proceeds to
14 be received from the sale would be insufficient to pay the
15 senior lien of the senior lenders.

16 First of all, that argument obviously assumes that the
17 senior lenders' lien is senior rather than junior to the Welsh
18 and Katz lien. And so for the same reasons I discussed a
19 moment ago, even if the Court were to accept this argument,
20 this particular argument, the order still would have to contain
21 the caveat or reservation regarding -- that I described a
22 moment ago, regarding determination of whether or not the Welsh
23 and Katz lien is senior or junior.

24 And second, this argument also assumes that under
25 applicable law, state law, the -- that such law would permit a
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1 foreclosure type sale of this -- these assets that are at issue
2 here in such a way that would extinguish an attorney's charging
3 lien or retaining lien, given that we are dealing at least in
4 large part with causes of action.

5 There has been no authority cited by the senior
6 lenders/purchasers or any other party that state law permits a
7 sale of that -- a foreclosure sale of that type that would in
8 fact extinguish junior liens. So I'm unable at this point to
9 conclude that that -- that that is a correct argument.

10 For those reasons the -- the -- the particular argument
11 I've just described which deals with state foreclosure law and
12 extinguishing of junior liens under that law is rejected. And
13 even if I were to accept it, the order would still have to
14 contain the reservation that I described.

15 So, that brings us then to the terms of the order that
16 need to be put in. Now I reviewed -- the terms that you need
17 to put in the order, I reviewed the portions of the proposed
18 order submitted by debtors and others, Paragraph 27, Option A
19 and Option B.

20 Option B is out based on my ruling. And I had some
21 questions about Option A. I also read the proposed order
22 language that Mr. Shapiro submitted for the most recent hearing
23 this afternoon and that is out as well, since the ruling
24 rejects that view of the objection.

25 And so the -- first of all, the objection to the sale by
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1 Welsh and Katz is sustained in part to the extent I've
2 indicated and otherwise overruled. Now with respect to the
3 order, Mr. Shapiro, I had some questions about the proposed
4 order, Paragraph 27, Option A. And I don't think you have had
5 yet an opportunity to comment about Option A as opposed to the
6 version that -- of the order -- of the order that would -- that
7 would apply if I had ruled more in your favor, your client's
8 favor on this objection. Did you want to comment on the form
9 of Option A under the debtors' proposed order?

10 MR. SHAPIRO: Are you talking about commenting in
11 open Court, or having a discussion with debtors' counsel?

12 THE COURT: You know, either way is fine with me. I
13 think -- I indicated in my ruling that -- let me just mention a
14 couple of my concerns and then perhaps it might be well for the
15 parties to talk about this rather than hash this out in open
16 Court. And see if you can work out appropriate language.

17 As I understand -- let me just mention the concerns I -- or
18 questions I had. First, Paragraph 27 leading up to Option A
19 and Option A, I think deal only with transferred claims. As I
20 understood Welsh and Katz's objection, they are claiming a lien
21 in actual patents themselves as well and they are or may be
22 claiming a lien, a retaining lien in property of the debtor
23 such as books and records and so forth that is also being sold.

24 I don't know the extent to which there -- there is such
25 property as part of this sale. So that's part of, I guess, the
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1 comment I made in my ruling that the property in which Welsh
2 and Katz claims to have a lien that is being sold, needs to be
3 defined with particularity to make sure that all of it is
4 covered by this order.

5 The second question I had was, in Option A the second
6 line, it contemplates as a procedure for resolving post-sale
7 dispute about the priority of these competing liens as between
8 the agent for the senior lenders on the one hand and Welsh and
9 Katz on the other hand, that the agent can wait up to nine
10 months to file a motion to ask the Court to resolve that issue.

11 And I didn't understand why we should wait nine months or
12 anything approaching nine months, but that -- the parties can
13 certainly talk about that and give me their --

14 MR. MAYER: Your Honor, this is -- this is Tom --

15 THE COURT: Just a minute.

16 MR. MAYER: -- Tom Mayer.

17 THE COURT: Hold it, hold it, hold it, hold it, hold
18 it, stop. I'll let you know when you can talk, Mr. Mayer, all
19 right? Mr. Mayer?

20 MR. MAYER: Yes, Your Honor.

21 THE COURT: I'll let you know when you can talk. We
22 have a problem here in that when you're talking on that speaker
23 phone I can't interrupt you and you can't hear me. So wait
24 till I'm done and I call on you and then you can talk, okay?

25 MR. MAYER: Yes, Your Honor.

1 THE COURT: All right. Thank you. All right. So,
2 you know, we're going to need to perhaps talk about that.

3 Now it may be the best thing is for the parties to go out
4 in the hall so to speak, maybe Mr. Mayer needs to be patched in
5 by phone and talk about refining the language in this order
6 under Paragraph 27, including Option A.

7 Now I'll start with Mr. Shapiro, does that make sense to
8 you, Mr. Shapiro, that you want to go out and talk about the
9 form of this order?

10 MR. SHAPIRO: That's perfectly fine, Your Honor. I
11 don't have a great deal of changes. And one of them was
12 exactly what the Court had mentioned with regard to defining
13 all of the assets subject to the alleged lien. But I'm more
14 than happy to sit down. Did the Court have any other comments
15 about the Option A?

16 THE COURT: Well, I didn't. I thought the idea of an
17 escrow in case money does come in in the interim before there
18 is a determination on priority was a good idea. But you know,
19 again you can talk about that.

20 Now, let me turn then to Mr. Mayer. Mr. Mayer, can you
21 hear me?

22 MR. MAYER: Yes, Your Honor. I claim blame for this
23 language and I just wanted to indicate first, I don't have any
24 problem with defining more specifically the interest that Welsh
25 and Katz is asserting a lien and it should be -- the issue is
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1 to preserve the -- their rights to assert the liens and
2 therefore adding in patents and other references are fine with
3 me.

4 With respect to the nine month period, Your Honor, the
5 point was not to wait nine months. The point was to say that
6 there are other places in the order where is it contemplated
7 that a plan of reorganization will be confirmed within nine
8 months.

9 And since the issue of priority relates not just to assets
10 that are being transferred to the purchaser, but to assets that
11 are remaining in the estate, seemed to me that the issue needed
12 to be teed up for litigation within that nine month period.
13 That was the purpose of the language, not that we'd wait nine
14 months, but that we would have to start it within the nine.

15 THE COURT: Okay. And perhaps what the parties can
16 talk about when you talk about this working out this language
17 as well is a mechanism by which Welsh and Katz can trigger a
18 Court determination through a motion or otherwise of the issue
19 of priority of liens so that they're not, you know, essentially
20 held hostage having to wait until, you know, the agent or
21 somebody other than them file something to challenge the
22 priority.

23 All right. Did anyone else want to say anything on this
24 subject of getting the form of this -- this part of the order
25 finalized?

1 MR. SHAPIRO: Your Honor, there's one particular
2 issue that I think it may be better addressed by the Court or
3 with you here. And that's with regard to a reference in Option
4 A, it's Line 7 and then 13.

5 There's a reference to the asserted interest in the
6 transferred claims being prior to the interest asserted by the
7 agent. I'd like to change that to senior in whole or in part.

8 THE COURT: That's -- that may be fine, but that's
9 the kind of thing I want you to talk about in the hall.

10 MR. SHAPIRO: Well, I kind of figured that it might
11 become an issue and we might have to --

12 THE COURT: It is -- it has priority. It's an issue
13 of priority. So, you know, if you want to --

14 MR. SHAPIRO: That's fine.

15 THE COURT: Want to make sure we say that
16 unambiguously you're right.

17 MR. SHAPIRO: All right.

18 THE COURT: If that's what --

19 MR. SHAPIRO: That's fine, Your Honor.

20 THE COURT: Yeah, sure. And that's maybe a good
21 point. I'm just saying this is the kind of thing you don't
22 need me to try to work out this language in the first instance
23 I don't think. So --

24 MR. SHAPIRO: Understood.

25 THE COURT: All right. Anyone else want to say

1 anything about the subject of the Welsh and Katz -- the form of
2 the order portion dealing with Welsh and Katz?

3 All right. Why don't we then allow Welsh and Katz and the
4 attorneys, other attorneys who are appropriate, to deal with
5 this language which I assume includes Mr. Mayer, to go out and
6 work on that. Mr. Mayer, are you able to work on that by
7 telephone or otherwise while we deal with other portions of the
8 order, or do you need to be here for the rest of this?

9 MR. MAYER: May I speak, Your Honor?

10 THE COURT: Sure.

11 MR. MAYER: First, no, I don't have to be present. I
12 do actually have another call I need to take. But if Mr.
13 Shapiro can send me comments say in half an hour, I'm sure I
14 can turn them around pretty quick and my colleague Ms. Caton
15 will be on for the balance of the call. So if it's okay with
16 the Court, I would ask to be excused and I'll turn to Mr.
17 Shapiro's comments as soon as I get them.

18 MS. LAMB-HALE: Your Honor, I don't think we have
19 half an hour. I would like to accommodate Mr. Mayer, but I
20 wondered if maybe we could get it done sooner.

21 THE COURT: I was thinking Mr. Shapiro go out in the
22 hall right now and do this with you Mr. Mayer now, right now.

23 MR. MAYER: Oh, right now? Oh, okay. I don't have a
24 -- in open Court. I can --

25 THE COURT: Not in open Court. Out in the hall and
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1 you on the phone.

2 MR. MAYER: I'm happy to take his call.

3 THE COURT: All right. Mr. Shapiro, do you -- are
4 you able to do that while we take up the rest of the order, or
5 do you need to be here for the rest of the order?

6 MR. SHAPIRO: I do not need to be here if I can just
7 get a phone number to call Mr. Mayer, I'm more than happy to
8 contact him.

9 MS. LAMB-HALE: I do.

10 MR. SHAPIRO: Okay.

11 THE COURT: All right. Mr. Mayer, we'll give Mr.
12 Shapiro the phone number our Court Reporter has, is that -- is
13 that a good number?

14 MR. MAYER: It's 212-715-9169.

15 MR. SHAPIRO: I have it, Your Honor.

16 THE COURT: Okay. Mr. Shapiro, you have a copy of
17 this Paragraph 27?

18 MR. SHAPIRO: I do. I do, Your Honor.

19 THE COURT: All right. Okay, fine. Thank you. Good
20 luck on that. Now, we have the rest of the order then.

21 MS. LAMB-HALE: Yes. And Your Honor, if I may add.
22 We made an additional change, I know you hate to hear that.

23 THE COURT: No, that's fine, that's fine.

24 MS. LAMB-HALE: To Recital U of the order. So if I
25 could indulge you to take those two copies back.

1 THE COURT: Yes. Here they are.

2 MS. LAMB-HALE: Thank you. And we'll make that
3 change so you can see.

4 THE COURT: I think you got the signature page back.

5 (Off the Record Comments)

6 MS. LAMB-HALE: May I approach, Your Honor?

7 THE COURT: Sure. All right. You've given me one
8 copy of the order. The others are being marked up, is that it?

9 MS. LAMB-HALE: Yes, they are, Your Honor.

10 THE COURT: All right. So this copy has all the
11 change, the latest change.

12 MS. LAMB-HALE: Yes, it does. That's the master.
13 Here are two copies of the signature pages.

14 THE COURT: Okay. Okay. We're missing the signature
15 only of Mark Shapiro which we'll deal with after we finish the
16 Welsh and Katz order -- portion of the order.

17 Okay. Now, I think this might be the best time to allow
18 anybody who wants to make any statements about reservations of
19 rights, any other statements to -- to do that for the record.
20 I'm going to have to take few minutes and review the changes in
21 the order and not only the handwritten changes, but the changes
22 from the original form of the order.

23 On the last recess I focused on the Welsh and Katz portion
24 only. So I've got to go back and I've got to take a little

25 time to do that. But before we do that, why don't we hear from
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1 any attorneys for any party that want to say anything about
2 this. Mr. Orr, you want to go first, I guess.

3 MR. ORR: Thank you, Your Honor.

4 THE COURT: Go ahead.

5 MR. ORR: Norman Orr on behalf of Multimatic Sales
6 and Marketing. Again as I tried to explain earlier, Paragraph
7 49 indicates that it's necessary to reserve on the record
8 concerns about use of the proffers of testimony or the
9 stipulations and findings of fact contained in the record in
10 other matters.

11 And on behalf of my client, I would like to reserve their
12 rights that those -- that testimony and those stipulations not
13 be used in the separate adversary proceeding that exists or
14 should there be a future attempt to assume and assign a
15 contract involving my client. Thank you, Your Honor.

16 THE COURT: Now, Mr. Orr, you referred to Paragraph
17 49. Did you mean Paragraph 47?

18 MR. ORR: I'm sorry, 47. I apologize. I'm working
19 off an earlier draft.

20 THE COURT: All right.

21 MR. ORR: Sorry, Your Honor.

22 THE COURT: Okay. Who is next, Ms. Fish?

23 MS. FISH: Good afternoon, Your Honor. Mr. Peurach
24 had to leave on behalf of Harper Properties. He had made his
25 reservation prior to the Court taking the break and I just

1 confirmed for him that I would make the reservation again if
2 called upon on behalf of Harper Properties. We'd like the same
3 reservation as to all the other parties making the reservation
4 pursuant to Paragraph 47. Thank you.

5 THE COURT: So you're -- you're doing this on behalf
6 of Mr. Winget, the Winget living trust, and Harper Properties?

7 MS. FISH: Correct, Your Honor.

8 THE COURT: Okay.

9 MS. FISH: I think that would also include based on
10 the language in the cure notice too, that it would be any
11 entity owned or controlled by Mr. Winget other than the
12 debtors. Thank you, Your Honor.

13 THE COURT: All right. Ms. Osborne.

14 MS. OSBORNE: Good afternoon, Your Honor. I believe
15 I did this yesterday, but I want to be clear in making the same
16 type of reservation of rights on behalf of Delphi Automotive
17 Systems, LLC and any of its affiliates as well as Johnson
18 Controls, Incorporated and any of its affiliates reserving any
19 rights or claims they may have. And certainly complete
20 reservation of rights with respect to any evidence proffered by
21 the debtor in support of finding the adequate assurance or
22 otherwise under Section 365 of the Code.

23 THE COURT: All right.

24 MS. OSBORNE: Thank you, Your Honor.

25 MR. LAPLANTE: Your Honor, on behalf of Autoliv, in
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1 Paragraph 27 but maybe elsewhere in the order there is a
2 statement of the amount of the judgment against Autoliv and we
3 reserve the right to verify that amount. I haven't have an
4 opportunity to do so with my client before now.

5 THE COURT: That's the jury verdict judgment?

6 MR. LAPLANTE: Yes, Your Honor.

7 THE COURT: Well, what do you mean you want to verify
8 the amount? When are you going to do that?

9 MR. LAPLANTE: I'm waiting to hear back from my
10 client that that is in fact the amount and that it's properly
11 calculated.

12 THE COURT: Oh, I see, I see. So you want to --
13 before we finish this afternoon, you want to tell me yea or nay
14 that's the right -- the right amount or not.

15 MR. LAPLANTE: That's correct, Your Honor.

16 THE COURT: Okay. All right. Thank you.

17 MR. LAPLANTE: Thank you.

18 THE COURT: Remind me please before we finish about
19 that if I forget.

20 MR. LAPLANTE: I will, Your Honor.

21 THE COURT: Thank you. Mr. Nathan.

22 MR. NATHAN: Good afternoon again, Your Honor. Ken
23 Nathan for Newstart Factors, Inc. In an abundance of caution,
24 I would put the same reservation of rights on the record.

25 I would also ask the Court if the Court is inclined to
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1 sign an order today, are you going to come back out and do
2 that, or are you going to just do it in chambers?

3 THE COURT: I'm going to come back out.

4 MR. NATHAN: Then I reserve the right at that time to
5 ask the Court for additional relief. Thank you.

6 THE COURT: I'm sorry, additional relief?

7 MR. NATHAN: Yeah, possibly of stay pending appeal or
8 some type of oral motion in that regard.

9 THE COURT: Oh, I see. All right.

10 MR. NATHAN: Thank you.

11 THE COURT: Mr. Burgess.

12 MR. BURGESS: Thank you, Your Honor. I just want to
13 make sure that the record is clear as to the scope of these
14 various reservations that have been noted this afternoon.

15 It's my understanding and in the specific context of
16 Paragraph 47 of the proposed order, that these reservations as
17 to evidence that was proffered cannot later be used to attack
18 the sale itself or the good faith transfer of the assets,
19 assuming the Court approves the order. But rather these
20 reservations pertain to items such as adequate assurance of
21 future performance as to contracts that may subsequently be
22 assigned.

23 But I do think it's necessary to make it clear that this
24 is not a reservation to attack the order itself as to the sale
25 of the assets. I think that's clear as to the parties, but I
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1 wanted to make sure that the record was crystal clear on that
2 point.

3 THE COURT: Does any party who has made any
4 reservations of rights during this hearing have any different
5 view than what Mr. Burgess just expressed? Hearing nothing, I
6 think that then is clear and agreed, Mr. Burgess. All right.
7 Anyone else want to say anything?

8 All right. I think it's time then for me to go back and
9 -- and review the order. And I will do that as quickly as I
10 can. And then come back out. Oh, Mr. Shapiro, you're back.
11 Are you still working on your language?

12 MR. SHAPIRO: Actually, Your Honor we were able to
13 resolve all the issues very quickly. Apparently Mr. Mayer had
14 another conference call he had to get to, so he was
15 consummately reasonable.

16 THE COURT: Okay. So --

17 MR. SHAPIRO: I'm just writing those in. Do you want
18 me to bring it around into chambers after? I'm just trying to
19 finish the last --

20 THE COURT: Sure. Why don't you -- as soon as you
21 get the language done that's agreed on, you know, why don't you
22 hand it in, let me -- I'll look at it while I'm looking at the
23 rest of this stuff.

24 MR. SHAPIRO: Yeah, actually I'll obviously give it
25 to Ms. Lamb-Hale first and let her take a look at it.

1 THE COURT: Yeah. All right. Thank you.

2 MR. SHAPIRO: Thank you.

3 THE CLERK: All rise, please.

4 (Court in Recess at 3:14 p.m.; Resume at 4:10 p.m.)

5 THE COURT: All right. Thank you all. I have
6 reviewed the proposed order as well as the language submitted
7 -- submitted -- submitted by Mr. Shapiro regarding the Welsh
8 and Katz treatment and have just a couple of things to raise
9 here.

10 First, a very minor point on the order, Page 2. The
11 recital that the day of the hearing, I just added where it says
12 hearing on this motion having been held on April 18, I added
13 and 19. Given the reservation of rights and some of the other
14 things that took place today, I wanted to add that. So I'm
15 adding that to each copy of the order and initialing that.

16 Then I wanted to talk about the Welsh and Katz language.
17 Mr. Shapiro --

18 MR. SHAPIRO: Yes, Your Honor.

19 THE COURT: I reviewed what you submitted. A couple
20 of questions about it. One, under Option A there, do you have
21 a copy there of what you handed in or --

22 MR. SHAPIRO: I actually gave you my only copy.

23 THE COURT: All right.

24 MR. SHAPIRO: I have one here, Your Honor.

25 THE COURT: All right. Option A, the second sentence
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1 which begins with the words if an order is entered determining.

2 MR. SHAPIRO: Yes, Your Honor.

3 THE COURT: Do you see that?

4 MR. SHAPIRO: I do.

5 THE COURT: I'm wondering if we should say in there
6 if and to the extent an order is entered determining.

7 MR. SHAPIRO: That's fine.

8 THE COURT: Okay. And then the same comment
9 regarding the next sentence where it says if such final order
10 determines that. Should we say if and to the extent such final
11 order determines that.

12 MR. SHAPIRO: That's fine, Your Honor.

13 THE COURT: Do you see what I'm saying there?

14 MR. SHAPIRO: I do.

15 THE COURT: All right. The order contemplates -- the
16 rest of the order -- section there or paragraph contemplates
17 that it may not be an all or nothing proposition with respect
18 to priority of these liens.

19 And I'm wondering also whether on -- in the opening
20 paragraph before the Option A language, where it says at the
21 end of that paragraph Welsh and Katz has asserted interest and
22 the transfer of claim shall be treated as follows. I'm
23 wondering whether given the other language in the order in
24 various places you don't want to say something like that

25 wonderful phrase that everybody likes to use, notwithstanding
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1 any other provision of this order, Welsh and Katz's asserted
2 interest shall be treated as follows.

3 There is other language for example, Paragraph 34 of the
4 order that you would want to be sure this order is clear that
5 the Welsh and Katz particular treatment will trump that with
6 respect to Welsh and Katz's claimed liens. So it's up to you,
7 but it would seem to me that would make sense just for clarity.

8 MR. SHAPIRO: Yes.

9 THE COURT: That to the extent there's any language
10 elsewhere in the order that could suggest -- might suggest
11 Welsh and Katz's liens are sold free and clear, this -- this
12 makes clear that -- that this -- this governs.

13 MR. SHAPIRO: I have no problem with that, Your
14 Honor.

15 THE COURT: Okay. The other proposed changes you
16 wrote in there I guess you made some changes in blue ink are
17 fine with me. And so I think what I would ask you to do --
18 now, Mr. Mayer is no longer with us, I guess, or is he on the
19 phone? Is he back? No.

20 All right. I wouldn't think he would have a problem with
21 any of these changes that I have added. So we'll go ahead and
22 make these. But the other changes, he agreed to those, right?

23 MR. SHAPIRO: He did, Your Honor.

24 THE COURT: Okay. All right. Why don't we do this?

25 Why don't I give -- hand back the order -- somebody needs to
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1 write in your changes. In paragraph, it's 27, I guess.

2 MR. SHAPIRO: Yes.

3 THE COURT: Actually. All right. So I have -- I'll
4 put a little tag on the top one of these and somebody can write
5 that into each of the orders. So let me hand that back.
6 Whoever has the neatest handwriting, Ms. Lamb-Hale, how about
7 you?

8 MS. LAMB-HALE: It's not me it's --

9 THE COURT: It's not yours?

10 MS. LAMB-HALE: It's Ms. Abram's.

11 THE COURT: And here, let me hand back, Mr. Shapiro,
12 what you brought into chambers. The red markings on there are
13 scribblings of mine having to do with the changes we just
14 talked about.

15 And Mr. Shapiro, we need your signature at least approval
16 as to form, assuming that's appropriate in your view to the
17 order. If you don't want to sign off even as to that you can
18 say so and that's --

19 MR. SHAPIRO: No, Your Honor, I'm more than happy to
20 sign off on the order with those changes.

21 THE COURT: All right. Why don't you -- let me hand
22 you the signature pages. There's an original -- well, there's
23 a couple of copies. So you can sign it if you want to indicate
24 approval as to form or some other limitation, whatever you want

25 to write in there, go ahead. That's going to be attached to
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1 the back of the order right after this page with my signature
2 on it I think.

3 Has everyone who wants to had an opportunity to review the
4 -- what will be the final form of the language in Paragraph 27
5 regarding Welsh and Katz? Anyone want an opportunity to review
6 that who is present? Hearing nothing, that's fine.

7 All right. As soon as those changes have been written in,
8 I'm ready to sign the order. Mr. Nathan, you wanted to be
9 heard from?

10 MR. NATHAN: I do.

11 THE COURT: All right. Okay.

12 MS. LAMB-HALE: Your Honor, if I might. I just have
13 a logistical clean up matter. With respect to the sale hearing
14 as you know, there are a number of executory contracts that are
15 kind reserved at this point that the purchaser will determine
16 during the time period provided in the order whether they will
17 take assignment of -- of the same. And I wondered if it would
18 make sense to continue the sale hearing after entry of the
19 order as it relates to those matters.

20 THE COURT: No.

21 MS. LAMB-HALE: Okay.

22 THE COURT: No, this hearing ends right now, today
23 when I sign this order.

24 MS. LAMB-HALE: Okay.

25 THE COURT: If we need to set a hearing on any

1 disputes dealing with that, we can do that later. I had wanted
2 a procedure in the order that dealt with all of this. To the
3 extent it's not in there, the parties will -- can ask for a
4 separate order.

5 MS. LAMB-HALE: Okay.

6 THE COURT: If you want that establishes a mechanism
7 that triggers a hearing to be set on filing of a notice and
8 objections.

9 MS. LAMB-HALE: Yes. And I think that's provided
10 therein. I just didn't know if you wanted it technically --

11 THE COURT: To the extent it's not and you think
12 something needs to be cleaned up for that --

13 MS. LAMB-HALE: Sure.

14 THE COURT: -- then you know you can submit you can
15 ask for entry of an order that cleans that up.

16 MS. LAMB-HALE: Okay.

17 THE COURT: Or you can make the changes in this thing
18 right now if you think further changes need to be made. But I
19 don't -- I don't think we want to continue -- I don't want to
20 continue this hearing.

21 MS. LAMB-HALE: Okay.

22 THE COURT: Mr. LaPlante, did you want to say
23 something?

24 MR. LAPLANTE: Your Honor, I did want to verify for
25 the record that --

1 THE COURT: Oh, that's right, I'm sorry. Go ahead.

2 MR. LAPLANTE: The amount is correct from the Autoliv
3 judgment referenced in Paragraph 27.

4 THE COURT: Okay. Thank you.

5 MR. LAPLANTE: Thank you.

6 THE COURT: For the benefit of those in the
7 courtroom, Mr. Shapiro did sign the -- his signature to each
8 copy of the signature pages. I indicated he wrote in above it
9 approved as to form.

10 I'll tell you what, Mr. Nathan, would you like to be heard
11 from now while we're waiting for this?

12 MR. NATHAN: Yes, Your Honor. In light of the fact
13 that you've indicated you're going to sign the order and once
14 that change is made and everybody else has signed off.

15 THE COURT: Yeah, I am.

16 MR. NATHAN: We can move the process along.

17 THE COURT: Okay.

18 MR. NATHAN: For the record again, Your Honor, Ken
19 Nathan appearing on behalf of Newstart Factors, Inc. We'd like
20 to make an oral motion on behalf of my client for a stay
21 pending appeal with regard to entry of this order and the sale.

22 There has been no indication on the record from the debtor
23 or the purchasers as to when they intend to close this
24 transaction. It's my client's concern that they will close and

25 impede my client's rights of appeal prior to us getting back
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1 before you and before a District Court Judge. We're trying to
2 expedite that process.

3 THE COURT: Well, you can make your motion right now
4 and -- if you want to. It's an oral motion. Go ahead and to
5 the extent you feel the need to obtain a written order or file
6 after today a written motion in this Court, you're certainly
7 free to do that.

8 MR. NATHAN: Well, it's just necessary for us to get
9 a ruling from this Court and that the Court normally is not
10 inclined to stay their own entry of a -- of a sale motion. We
11 do then have to go to the District Court and indicate to the
12 District Court that the Judge in the Bankruptcy Court denied it
13 and the reasons for their denial.

14 THE COURT: I understand.

15 MR. NATHAN: I would indicate to the Court that --

16 THE COURT: Now let me just say that I'm happy to
17 hear your motion now in the interest of time and the urgency of
18 the matter. And I do note, however, that by definition I
19 presume you have not filed a notice of appeal yet.

20 MR. NATHAN: I understand and we have not.

21 THE COURT: The order hasn't been signed yet.

22 MR. NATHAN: Correct.

23 THE COURT: We're going to sign the order and then
24 you -- if you want to file a notice of appeal, obviously your

25 client can do that. I have no problem with hearing your

1 motion, however, before the filing of the notice of appeal and
2 a few minutes before I sign the order with the understanding
3 that -- that we're treating this as if -- the same way we would
4 treat it as if the order had been signed and you had filed a
5 notice of appeal so that you don't have to just go through the
6 same exact steps all over again with -- with the Bankruptcy
7 Court but at the District Court level.

8 And to the extent the law permits me to treat it that way,
9 I'm happy to do that. So why don't you go ahead with your
10 motion.

11 MR. NATHAN: Thank you, Your Honor. On behalf of my
12 client again, Newstart Factors, Inc., we request --
13 respectfully request today that the Court enter a stay pending
14 the appeal on the sale motion.

15 I would indicate too that I do not believe it would cause
16 any detriment to the debtor or to the purchasers who intend to
17 close on this transaction for whom's benefit I believe that
18 this sale has occurred. I would indicate that I believe that
19 it would cause them no detriment -- no detriment for the reason
20 that there are various issues that need to be resolved prior to
21 the closing or in lieu of the closing and relate to executory
22 contracts, cure amounts, and things of that nature which are
23 going to be the subject matter of negotiations and potential
24 hearings before this Court going forward.

25 There is no, as I can see it, no immediate damage that
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1 would be caused to the debtor or the purchasers by a stay for
2 some period of time to allow an appeal to move forward. There
3 would be a significant detriment to my client and their rights
4 of appeal if no stay is granted and the sale closes.

5 A provision under 363 would indicate that the appeal would
6 then be moot once the sale has closed. So I believe it's
7 363(h), I don't have my Code in front of me, Your Honor, but
8 there is a provision under 363 that provides that if a sale
9 closes with an appeal pending, without a stay being issued then
10 that appeal is moot. So there would be significant detriment
11 and harm to my client if no stay is issued at this time.

12 THE COURT: You're referring to 363(m), reversal or
13 modification --

14 MR. NATHAN: (m), excuse me.

15 THE COURT: -- on appeal of an authorization, et
16 cetera.

17 MR. NATHAN: Yes, Your Honor.

18 THE COURT: Does not affect the validity of the sale
19 or lease unless such authorization or sale were stayed pending
20 appeal.

21 MR. NATHAN: Correct, that's exactly correct, Your
22 Honor.

23 THE COURT: Okay.

24 MR. NATHAN: 363(m) would be correct then, thank you.

25 THE COURT: All right. Go ahead.

1 MR. NATHAN: And so therefore if you waive the harm
2 and the detriment between the parties on the one side the
3 debtor and the purchaser versus the -- my client on the other
4 hand, there will be significant -- I believe it weighs in favor
5 of Newstart over the debtor and the purchaser. Specifically
6 relating to the fact that again 363(m) provides that if there
7 is no stay pending appeal that these parties can then rush to
8 close, close the transaction, and create a moot appeal at that
9 point and no rights will prevail for my client to have a
10 District Court or a higher Court look at what transpired here
11 and -- and -- and preserve our rights.

12 THE COURT: Uh-huh. What -- before coming out
13 knowing what you were going to do, I reviewed Rule 8005 of the
14 Federal Bankruptcy Rules. What -- what rules -- what rule or
15 rules exactly are you relying on for this Court's authority to
16 issue a stay here? 8000 -- the rule I just referred to, or
17 something else, 8005 or something else?

18 MR. NATHAN: One moment, Your Honor.

19 THE COURT: Sure.

20 MR. NATHAN: Well, there's 8005, Your Honor.
21 Bankruptcy Rule 8005 would be the rule that we would rely on
22 for the stay pending appeal.

23 THE COURT: All right.

24 MR. NASH: Your Honor, could I point out a factual
25 point at some point in this process? This is Pat Nash on
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1 behalf of the DIP lender.

2 THE COURT: Mr. Nash, are you referring to a desire
3 to respond to the motion for stay?

4 MR. NASH: I'm sorry, Judge. You went out on me just
5 a little bit there. I just wanted to make sure that Your Honor
6 was aware and I would presume Mr. Nathan would be aware since
7 he represents a member of the DIP lending group that the
8 debtors' DIP financing facility per its terms expires ten days
9 after the conclusion of the sale hearing. And that's certainly
10 a relevant fact when evaluating the harm of staying or not
11 staying the closing of the sale transaction.

12 THE COURT: Mr. Nash, what I said was, I had asked
13 you whether you were -- wanted to respond to the stay motion.
14 And it sounds like you do and I'll take what you've already
15 said, but you can have an opportunity to respond in a moment
16 further if you wish.

17 MR. NASH: I'm sorry, Your Honor. You were --
18 there's a little bit of fading out, I apologize.

19 THE COURT: I'm -- I'm probably fading out myself,
20 but, all right.

21 MR. NASH: Thanks, Judge.

22 THE COURT: Okay. Mr. Nathan, go ahead. I didn't
23 want to -- I wanted to make sure you were finished before we go
24 further.

25 MR. NATHAN: I have nothing further, Your Honor.

1 THE COURT: All right.

2 MR. NATHAN: I'll just retain the right to reply to
3 any further argument.

4 THE COURT: All right. And Newstart does in fact
5 intend to appeal, Mr. Nathan, I presume?

6 MR. NATHAN: I've been told by my client that they do
7 intend to appeal, yes.

8 THE COURT: All right. What sort of security do you
9 think the Court should require if the Court granted a stay
10 here?

11 MR. NATHAN: I don't know that any security is
12 necessary at this point, Your Honor, if there's a stay issued,
13 weighing the relevant harm to the parties would be necessary
14 but at this point we haven't determined what that might be.

15 THE COURT: All right. All right. I'll hear now
16 from anyone who wants to respond to the motion for stay. Let's
17 start -- Mr. Nash, you've already spoken. Let's finish your --
18 whatever you want to say. Did you want to say anything further
19 on this?

20 MR. NASH: I just wanted to make sure that everybody
21 in the courtroom -- I think most are aware that -- that
22 everybody is aware that the DIP financing does expire ten days
23 after the conclusion of the sale hearing and that's I think
24 certainly a relevant factor.

25 MR. WALPER: Your Honor, this is Thomas Walper on
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1 behalf the Yucaipa companies, one of the purchasing group.

2 THE COURT: Yes, sir, go ahead.

3 MR. WALPER: Thank you. I had scribbled down a note
4 before Mr. Nash spoke forward, but we -- we would like to adopt
5 the position of Mr. -- the -- the factual statement of Mr. Nash
6 in particular that Newstart is actually a member of the DIP
7 lender group and the -- the loans are to mature ten days from
8 today it sounds because this hearing is going to be concluded
9 today.

10 And it is the plan of the purchasers to close as close as
11 we can if not just before such time as that -- as that facility
12 expires. In the event that there is a stay and we are unable
13 to foreclose -- excuse me, to close, obviously there is going
14 to be very significant damage if the debtor in possession
15 financiers are to foreclose or otherwise be able to proceed
16 against the assets.

17 And the damage may, you know, be up to, you know, the full
18 amount of the purchase price. Hard to tell, it's not something
19 that can be calculated.

20 THE COURT: The damage you're referring to includes I
21 presume the -- the DIP expiring and the debtor Venture, the
22 Venture debtors having no further ability to operate.

23 MR. WALPER: That's correct, Your Honor. And then
24 the inability then to purchase the assets as a going concern,

25 or to -- to ever be able to purchase the assets if the -- if
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1 the DIP lenders are able to -- and require -- and allowed to
2 foreclose as a result of the maturity of their loan.

3 THE COURT: All right. Anyone else on the telephone
4 want to respond to the stay motion? I don't know who else we
5 have on the telephone at this point. Anyone else want to
6 respond on the telephone?

7 All right. Ms. Lamb-Hale, I think you were up.

8 MS. LAMB-HALE: Yes, Your Honor. And I would echo
9 the thoughts raised by the counsel for the purchasers and for
10 the DIP agent. I just think it's pretty ironic that Newstart
11 as a part of the lending group would number one, not know that
12 the financing expires in ten days.

13 And -- and number two, make such an argument when the DIP
14 lenders themselves are the ones who've kind of put us on the
15 track for the closing to occur at the end of the month. I
16 would certainly expect that if Mr. Nathan is prepared to -- to
17 file the stay that he would post a bond in the amount of the
18 purchase price. I think that would be appropriate.

19 Because I think and I need to check my asset purchase
20 agreement, but I think that we may be in danger as well of
21 losing our purchaser if the -- if the order is not stayed.

22 Also, I would also state that all of the assets that are
23 essential to the operation of the business are being
24 transferred. So the few executory contracts and leases that
25 must be dealt with -- that remain to be dealt with should in no
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1 way suggest that the sale -- there's no harm if the sale isn't
2 consummated and that the 6004(g) provision is waived. And I
3 think Mr. Burgess would like to speak to the issue of whether
4 Newstart is prejudiced with respect to the matter at hand.

5 THE COURT: Well, before you -- before you sit down,
6 a couple questions. And this -- this is related -- the
7 comments were also made by Mr. Nash and Mr. Walper.

8 The terms of DIP facility in place now, remind me, because
9 I remember -- I recall an end of April expiration. Does the
10 DIP facility provide that it expires ten days after the -- the
11 completion of the hearing on the sale motion or the end of
12 April whichever occurs sooner?

13 MS. LAMB-HALE: I think it's ten days after the
14 conclusion of the sale hearing, Your Honor. And Mr. Nash would
15 probably know better than I to the -- to the letter. But that
16 is my understanding of the documents, Your Honor.

17 THE COURT: Mr. Nash, what is your understanding on
18 the question I just asked? Did you hear me?

19 MR. NASH: I did, Your Honor. The DIP financing
20 expires ten days after the conclusion of the sale hearing,
21 period, full stop. That ultimately outside date of April 30th
22 that Your Honor is no doubt recalling from the term sheet, did
23 not make its way into the amendment and its not part of the
24 amendment, so the financing expires ten days after termination
25 of -- or conclusion of the sale hearing which, you know, I

1 guess will be the end of April in any event.

2 THE COURT: All right. Thank you. Ms. Lamb-Hale, I
3 don't know if that is part of the reason you were asking
4 earlier that this sale hearing be adjourned or continued rather
5 than concluded today. If that was part of your reason you
6 didn't tell me that. But I still think it's -- it's not
7 appropriate to continue this hearing or to say that it's not
8 completed. It is going to complete today because the order
9 that grants all the relief sought by the motion, to the extent
10 it's going to be granted at all, is -- is being signed.

11 And to the extent it defers issues until a later time, it
12 seems to me that's not a basis given the issues involved to
13 continue the hearing. So let me just reiterate that -- that
14 this hearing is going to complete today when I sign this order.

15 MS. LAMB-HALE: Yes.

16 THE COURT: All right. Mr. Burgess, did you want to
17 say something?

18 MR. BURGESS: Yes, Your Honor. Your Honor, I think
19 it's important to pick up on the question that the Court raised
20 a few minutes ago as to whether or not a bond would be
21 required.

22 I think under the circumstances the harm that would be
23 imposed upon the debtors' estates if this sale approval order
24 were to be deferred or stayed are substantial such that a bond
25 would be required. I know that this is not an adversary

1 proceeding technically and so I don't want to overlay the
2 import of Rule 7062 which incorporates Rule 62 of the Federal
3 Rules of Civil Procedure.

4 But at least in that context any stay that would be
5 considered by the Court would require the filing of a bond.
6 And then under Rule 8005 of the bankruptcy rules, there is a
7 further reference to the ability of the Court to enter orders
8 that would protect the interests of all the parties.

9 The Court's ruling as to Newstart's objection was that
10 Newstart was fully protected by its ability if it desires to
11 file an action against the agent or other parties suggesting
12 that there has been a breach of contract or a breach of some
13 other duty and result in damages.

14 The entry of the order approving the sale of the assets
15 will have no impact upon that right of Newstart and therefore
16 protecting its interest by staying the sale is unnecessary. It
17 has its other remedies in some other form.

18 So we do in fact join the suggestion raised by the debtors
19 and other parties that the filing of a bond would be absolutely
20 required if a stay were to be entertained here. But that in
21 all events it's neither necessary nor appropriate to consider
22 staying the order because Newstart has all of its rights and
23 potential remedies preserved in some other forum. Thank you,
24 Your Honor.

25 THE COURT: All right. Thank you. Anyone else wish
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1 to be heard on the -- before we hear again from Mr. Nathan on
2 the stay motion?

3 MS. LAMB-HALE: Your Honor, Mr. Applebaum on behalf
4 of the committee had to leave and he requested that I also put
5 the position of the committee on the record and the committee
6 concurs with what's been said today by other counsel and is
7 opposed to a stay.

8 THE COURT: By other counsel opposing the stay?

9 MS. LAMB-HALE: Correct.

10 THE COURT: All right. Anyone else before we hear
11 from Mr. Nathan? Okay, Mr. Nathan.

12 MR. NATHAN: I'll be brief, Your Honor, it's late in
13 the day. Your Honor, the requirement of a bond is not an
14 absolute in the Rule 8005. It's discretionary to the Court in
15 weighing the harm and -- and the issues that are involved.
16 It's up to the Court to make that determination. I just want
17 you to be aware of that, that it's not an absolute.

18 I think everybody has presented it in a way that it is an
19 absolute. It's a balancing act for the Court to make that
20 determination. And certainly on behalf of Newstart, we would
21 ask that any bond be waived and that a stay of appeal be
22 entered. Thank you.

23 THE COURT: All right. Thank you, Mr. Nathan.

24 I'm going to deny the stay motion rather than condition --
25 grant on posting of a bond. The -- there is no written motion

1 but -- and therefore New start has not by definition had an
2 opportunity to file any sort of brief or statement of --
3 written statement of authorities in support of its motion for a
4 stay here.

5 But I will note that traditionally the factors that trial
6 Courts in the Federal Court system consider under -- under --
7 when dealing with stay pending appeal requests under Federal
8 Civil Rule 62 which does not strictly apply here because this
9 is not an adversary proceeding, but under that rule as well as
10 in other contexts, and I believe Bankruptcy Courts as well in
11 contested matters which is what we have here, and under Federal
12 Bankruptcy Rule 8005 which does appear to have some application
13 here, the Courts consider several factors in deciding whether
14 to issue a stay pending appeal on an order or judgment.

15 One of those is the probability of success on appeal or
16 sometimes put as the likelihood of success on appeal, the
17 merits of the appeal. As commentators in cases have frequently
18 noted when you're asking the same Court or same Judge that
19 issued the order that you're appealing to in effect rule that
20 this factor weighs in your favor, it's tantamount to asking the
21 Judge to predict that the decision he just made is likely wrong
22 and will likely be reversed on appeal either as legal error
23 based on findings that are clearly erroneous, or is an abuse of
24 discretion.

25 And it is hard of course to expect a party to very often
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1 persuade a Judge that just -- the Judge that issues the order
2 or a judgment at issue that that is so. And the case law
3 generally I think understands that and gives some leeway on
4 that factor by indicating that as long as there are -- that a
5 Court can find this factor weighs in favor of the stay as long
6 as there are serious issues going to the merits with respect to
7 issues on appeal, I don't find though that the -- I conclude
8 that the likelihood of success on appeal is low, quite low, and
9 by Newstart here, and that there are not serious issues going
10 to the merits of potential appeal, at least based on the issues
11 as I understand them that were the subject of Newstart's --
12 Newstart's objection.

13 And it's not to say that Newstart's arguments were
14 frivolous or that -- that Newstart would not have a colorable
15 basis, a good faith basis for pursuing an appeal here and for
16 having made the objections that it made. When I say they're
17 not serious issues going to the merits, I mean that in the
18 terms of the meaning that the case law gives to that kind of
19 formulation. Which is that really another way of saying that
20 there -- there is at least a decent chance of success on appeal
21 here.

22 I don't think there is. And so that factor weighs against
23 the estate in any appeal in my opinion, although I grant you
24 we're talking about a decision that I have made that's being
25 appealed and so there is always, you know, that consideration

1 there.

2 The District Court when -- when and if Newstart asks the
3 District Court for a stay pending appeal, will not have that
4 constraint in this consideration the of probability of success
5 on -- on an appeal.

6 Another factor that the Courts consider is the balance of
7 harms. That is the -- the harm that may occur to the appellee
8 or appellees if there's a stay pending appeal versus the harm
9 that may occur to the appellant or appellants if there is not a
10 stay pending appeal.

11 And -- and sometimes similar to that, or woven into that
12 is a factor, or at least sometimes overlapping with that is the
13 factor of the public interest. With respect to those factors,
14 I think those factors, I think those factors weigh strongly in
15 favor of denying a stay pending appeal.

16 The harm or potential harm here to the debtors and the
17 estates of the debtors in the Venture case and the Deluxe case
18 both of staying this approval of this sale motion and order
19 pending appeal and thereby preventing the sale that is -- is
20 being approved here from closing for a period necessary for the
21 appeal to be is presumably some months of time. It certainly
22 can't be done by the end of April, is damage and harm to the
23 debtors' estates and to the creditors of these estates and
24 other parties in interest who have an interest in maximizing
25 the value of the debtors' estates in these bankruptcy cases.

1 The -- the DIP financing facility for the Venture debtors
2 expires roughly at the end of April. There is absolutely no
3 assurance or reason to believe on the record before the Court
4 now that there's any reason to believe that the DIP facility
5 would be extended by current DIP lenders, one of which is
6 Newstart, the party seeking the stay here, but only one of
7 which is New start. Or that it would be extended on terms that
8 are anything but extremely expensive simply because in the
9 marketplace there are no other choices extremely expensive to
10 the debtors' estates.

11 So the -- the ability of the debtors to continue operating
12 this going concern, the Venture debtors, and by extension the
13 Deluxe debtors because they received funding from the Venture
14 debtors and depend on that for their operation, the ability to
15 operate. The ability of the debtors in all of these cases to
16 continue operating beyond the end of April if there's a stay
17 pending appeal, it appears to be -- would appear to be in very
18 serious jeopardy and probably they would not be able to
19 continue operating and that could lead to any number of
20 catastrophic results from the view from the perspective of the
21 value of the estates in these bankruptcy cases.

22 The sale offers the opportunity to sell the businesses of
23 these debtors as a going concern and I have found and I believe
24 the order recites that this is -- that this maximizes the value
25 of the debtors' estates in these cases opposed to some other --

1 any other alternative other than a sale as a going concern.

2 If debtors' DIP facility expired and they were unable to
3 continue operating the ability to ever sell the debtors'
4 estates as a going concern would be in very serious jeopardy to
5 say the least. The result any number of catastrophic events
6 could or would occur if the debtors were unable to continue
7 operating because they lost the benefit of their financing
8 through their DIP facilities because the sale could not close
9 by the end of -- by the end of April or within ten days of
10 today before the DIP facility expires.

11 The harm then to the debtors' estates, the value of the
12 debtors' estates to the creditors in the estates of which there
13 are thousands, both administrative claimants and priority
14 claimants as well as the secured creditors as well as the large
15 unsecured creditors and the many smaller unsecured creditors.
16 It would be contrary to their interest in my view to stay this
17 sale order pending appeal.

18 The -- the harm on the other side in my view to denying a
19 stay to Newstart in my view is -- is minimal in that I do
20 believe as I have indicated I think previously in this hearing
21 in dealing with Newstart's objection, that the provisions that
22 we have put in the order approving the sale for the benefit of
23 protecting Newstart does give Newstart the ability to pursue
24 its claims against the agent for the pre-petition lenders, and
25 the other pre-petition lenders to the extent Newstart is

1 correct that there has been any violation by those -- any of
2 those persons or entities of Newstart's rights under the
3 pre-petition loan agreements and related documents.

4 Notwithstanding the approval of the sale order, those
5 claims are preserved expressly by the order and to the extent
6 they exist, Newstart may pursue them if it wishes to without
7 even appealing the order. And therefore without obtaining a
8 stay pending the appeal and without concern about whether the
9 sale closes or not.

10 The public interest I think given what I've already said,
11 obviously weighs against a stay here. The public interest is
12 not only the interest of the many administrative claimants and
13 many unsecured creditors in these bankruptcy cases including
14 suppliers to the debtors' businesses, but also the employees of
15 all of these debtors, a large number of -- of people in each
16 case would have -- would be adversely affected if -- in my view
17 if this stay is granted and the sale is not able to close
18 before the DIP facility expires. So in my view the public
19 interest strongly weighs against granting of a stay pending
20 appeal as well.

21 Further, with respect to the issue of whether the terms
22 that I have discussed to the bankruptcy estates and resulting
23 harm to the parties in interest and the public interest
24 concerns that I have expressed, to the extent Newstart might
25 argue or can be used arguing that that can all be -- that that
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1 can all be protected by the -- the Court requiring as a
2 condition of stay pending appeal, the filing of a bond or a
3 security in a sufficient amount, you know, I do note that the
4 Court could stay this order pending appeal and require a bond
5 in what would necessarily be a very large amount, hundreds of
6 millions of dollars probably.

7 But a problem with this is, it's very hard -- it's very --
8 it would be very hard for the Court to -- to accurately
9 estimate today what harm may be suffered and to quantify the
10 dollar amount of that harm that may be suffered by the debtors'
11 estates, in this case by the purchasers, by the pre-petition
12 senior lenders and by other parties in interest if the case the
13 sale order is stayed, the sale cannot close, the DIP facility
14 expires, debtors can no longer operate.

15 It is very hard to -- to quantify that number and
16 therefore it's very hard to be sure that any amount of bond the
17 Court would require astronomical though it might be, would be
18 sufficient. So in my view that's another factor along with the
19 others that I mentioned that weigh in my view strongly against
20 granting the stay pending appeal.

21 Now Section 363(m) and its provisions do make it difficult
22 and do create problems for Newstart if they are not able to get
23 a stay pending appeal, there's no doubt about that. But that
24 is the way the Bankruptcy Code is and that's how Congress --

25 Congress chose to give protections of Section 363(m) and (n) in
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1 the case of good faith -- good faith purchasers and sales under
2 Section 363 and so that is a choice that Congress made and --
3 and one which I am bound to -- to respect in -- and is part of
4 the regime we all live under the Bankruptcy Code as its
5 presently worded.

6 So the motion for stay pending appeal by Newstart is
7 denied. Mr. Nathan, if you would like a written order
8 reflecting this ruling, please prepare one. Simply say for the
9 reasons stated by the Court on the record that the oral motion
10 for stay pending appeal is denied. I'll -- I'll be happy to
11 sign that very promptly so that you, if you want to, can take
12 that to the District Court.

13 MR. NATHAN: Thank you. Can I do that without
14 signature of any of the other parties present?

15 THE COURT: Yes, absolutely. You prepare it, and get
16 it in. I will as soon as I see it, I'll review it and sign it
17 probably immediately.

18 MR. NATHAN: Thank you.

19 THE COURT: All right. All right. Thank you. Now,
20 is there any -- do we have the orders -- the order --

21 MS. LAMB-HALE: Yes, we do, Your Honor. May I
22 approach?

23 THE COURT: Sure. Okay. So you made the changes in
24 Paragraph 27 in these then?

25 MS. LAMB-HALE: Yes, where you have it tabbed, Your
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1 Honor, in each copy, yes.

2 THE COURT: All right. Mr. Shapiro, has he left?

3 MR. NATHAN: He left.

4 THE COURT: He left, okay. Have a chance to check
5 these?

6 MS. LAMB-HALE: Mr. Shapiro did not look at the other
7 copies. He looked at the --

8 THE COURT: All right.

9 MS. LAMB-HALE: -- original.

10 THE COURT: Okay. I've looked at the top copy of
11 that and that's fine, Paragraph 27. So what I intend to do
12 then is attach the signature pages to the back of the order
13 that's right before the Tab A, one on each and then sign each
14 copy of the order and this can be entered promptly then after
15 that and I think Ms. Lamb-Hale, you'll be able to take a copy
16 with you.

17 MS. LAMB-HALE: That would be great, Your Honor. I
18 wondered if you could also do a true copy of the third as well.
19 We can make copies of the signature page.

20 THE COURT: Ask -- deal with my courtroom deputy on
21 any requests like that.

22 MS. LAMB-HALE: Okay.

23 THE COURT: And I'm sure she'll accommodate you if
24 possible.

25 MS. LAMB-HALE: Thank you.

1 THE COURT: Is there anything else we need to talk
2 about? I'm going to take these back in chambers right now and
3 sign them and give them to my courtroom deputy. Anything else
4 we need to talk about?

5 MR. NATHAN: I would only ask that they be forwarded
6 to our office as soon as possible, a copy of that order.

7 MS. LAMB-HALE: We'll talk about that. We'll get
8 that to you.

9 THE COURT: Ms. Lamb-Hale?

10 MS. LAMB-HALE: Yes, I will get that to Mr. Nathan.

11 MR. NATHAN: Thank you.

12 THE COURT: Will you -- will you get Mr. Nathan a
13 copy right away? They're going to file an appeal so they're
14 going to need it.

15 MS. LAMB-HALE: Okay.

16 THE COURT: All right. Anything else? All right.
17 Thank you all.

18 MR. NATHAN: Thank you, Your Honor.

19 MS. LAMB-HALE: Thank you.

20 THE CLERK: All rise, please.

21 (Court Adjourned at 4:55 p.m.)
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We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Deborah L. Kremlick

Deborah L. Kremlick, CER-4872
Shelley J. Grasel, CER-0889

Dated: 9-11-06